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April 26, 2006

**DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Case Name: Personnel Security Hearing

Date of Filing: November 30, 2005

Case Number: TSO-0322

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup> A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should be restored.

**I. Background**

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

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<sup>1/</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

The individual was granted a DOE security clearance after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on September 26, 2005, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8(j). More specifically, the Notification Letter alleges that the individual has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse,” 10 C.F.R. § 710.8(j) (Criterion J).

In reference to Criterion J, the Notification Letter states that the individual was evaluated a DOE consultant-psychiatrist (DOE Psychiatrist) who determined that the individual indulges in binge drinking and/or excessive drinking and has been a user of alcohol habitually to excess in the past. The Notification letter further states that the individual has admitted that he has become intoxicated when he didn’t intend to, that his wife has told him that he drinks too much, and that he has continued to drink despite being informed that he has elevated liver enzymes that could be aggravated by alcohol use.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on November 30, 2005, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On December 2, 2005, I was appointed as Hearing Officer. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, the DOE Security called the DOE Psychiatrist as its sole witness. Apart from testifying on his own behalf, the individual called his supervisor as his only witness. The transcript taken at the hearing will be hereinafter cited as "Tr." Documents that were submitted during this proceeding by DOE Security and the individual constitute exhibits to the hearing transcript and will be cited respectively as “DOE Exh.” and “Ind. Exh.”

### Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual was granted a DOE security clearance in August 2001, six months after gaining employment with a DOE contractor. In December 2001, the individual was also certified under the DOE’s Personnel Assurance Program, later renamed the Human Reliability Program (HRP), 10 C.F.R. Part 712, as required in performance of his job

responsibilities. In order to maintain his HRP certification, the individual is required to submit to regular physical examinations. In April 2004, an HRP physical examination of the individual raised a security concern when the laboratory tests revealed that the individual had elevated liver enzymes (GGT, AST and ALV). The individual's GGT liver enzyme measured 138 on a normal scale of 0-65. Information in the possession of DOE Security indicated that excessive alcohol use might be the cause of the individual's elevated liver enzymes, and the individual was required to submit to a Personnel Security Interview (PSI) in September 2004, to possibly resolve this concern. However, the security concern was not resolved by the PSI, and the individual was therefore referred to the DOE Psychiatrist for an evaluation in June 2005. Below is a summary of the information supplied by the individual during the PSI and psychiatric interview regarding his use of alcohol.

The individual first began consuming alcohol on a significant basis during his senior year in high school, when he attended approximately ten "keg parties" and typically drank about six beers on each occasion. The individual admittedly became intoxicated at many of these parties. While in college, from 1987 to 1989, the individual drank to the point of intoxication on many weekends and on some weekdays, often consuming up to a 12 pack of beer. The individual reduced his consumption of alcohol after leaving college, drinking on an average of twice a month and limiting himself to six beers. The individual continued this level of alcohol consumption after marrying in 1994, usually when he went out drinking with his friends. However, the individual's wife did not drink and she confronted the individual on three or four occasions with her concern that the individual drank too much. Because of these confrontations with his wife, the individual made an effort to cut down on his drinking. The individual generally would drink every six weeks with friends, usually consuming six or more beers over two to three hours.

Since 2003, the individual has been taking a prescription medication, Effexor, for anxiety and depression. After receiving the HRP laboratory test results in April 2004, the individual notified his physician of his elevated liver enzymes. The impact of the individual's medication upon his liver enzymes, in combination with alcohol, is unclear. Nonetheless, the individual's physician instructed him to stop drinking for three months to lower his elevated levels. During this period, the individual's liver enzymes returned to a level only slightly above normal. In a laboratory test taken in August 2004, the individual's GGT liver enzyme was recorded as 69 on a normal scale of 0-65. However, the individual resumed drinking after the three months of abstinence, and admittedly drank to intoxication three weeks before the PSI conducted in September 2004.

At the time of his psychiatric interview in June 2005, the individual reported to the DOE Psychiatrist that during the preceding year, he typically drank every other week and would have four to nine drinks when he was drinking. The individual would have six or more drinks on half of these occasions. The individual reported that he had last

become intoxicated approximately one month prior to the psychiatric interview. On that occasion, the individual reportedly drank eight beers, which was more than he had intended to drink, while helping his father do tile work at a café.

The DOE Psychiatrist memorialized her findings and opinion in two reports issued on June 20, 2005 (Report I) and June 29, 2005 (Report II). In Report I, the DOE Psychiatrist determined that the individual did not have a diagnosable alcohol use disorder under criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR*. The DOE Psychiatrist further finds, however, that there is ample evidence that the individual engaged in binge drinking and/or excessive drinking, which she defines as more than five drinks a day. The DOE Psychiatrist required the individual to submit to a laboratory blood test which showed that the individual's GGT liver enzymes were again elevated to a reading of 94 on a normal scale of 0-65. According to the DOE Psychiatrist, the individual's binge drinking had not manifested itself in a significant impairment in the individual's judgment or reliability, but she cautioned that the individual's continued binge drinking could progress to more serious security concerns in the future.

The DOE Psychiatrist issued Report II nine days later in response to a request for additional information from DOE Security. In Report II, the DOE Psychiatrist affirmed her opinion that the individual has been an abuser of alcohol in the past and continues to engage in episodic excessive drinking leading to intoxication. The DOE Psychiatrist further observes in Report II that while these episodes of intoxication have not significantly impaired the individual's social, occupational or interpersonal functioning, he continues to drink excessively on occasion despite the knowledge that he has a physical condition, i.e. elevated liver enzymes, that could be aggravated by excessive alcohol use. The DOE Psychiatrist notes in this regard that there are two possible causes of this condition, the individual's prescribed medication (Effexor) and his continued alcohol use.

DOE Security also inquired whether the individual has displayed adequate evidence of rehabilitation or reformation from his use of alcohol habitually to excess. In response to this question, the DOE Psychiatrist first points out that habitual use of alcohol to excess is not a diagnosable illness or mental condition, and there are therefore no guidelines with regard to rehabilitation. Regarding reformation, however, the DOE Psychiatrist recommends in Report II that the individual stop any excessive drinking, and maintain normal drinking of no more than one or two drinks a day. As adequate evidence of such reformation, the DOE Psychiatrist states in Report II that the individual must abstain from alcohol completely for six months, consult with his physician regarding his anti-depressant medication, and that the individual submit to random laboratory testing during the six-month period to monitor his liver enzyme levels.

## II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should be restored since I conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

### A. Criterion J, Use of Alcohol

At the hearing, the DOE Psychiatrist explained her finding in her report (Report I) that while the individual does not have a diagnosable alcohol use disorder, there was "ample evidence that he continued to engage in binge drinking, which was by definition excessive drinking." Tr. at 36; DOE Exh. 11 (Report I) at 18. The individual did not dispute the findings of the DOE Psychiatrist, but expressed his understanding of her

concerns and openly acknowledged that he has engaged in binge drinking in the past that likely caused his elevated liver enzymes. Tr. at 18, 24-25.

On this basis, I find that DOE Security properly invoked Criterion J in suspending the individual's security clearance. The findings of excessive alcohol use by the DOE Psychiatrist is corroborated by the individual's own testimony. In other DOE security clearance proceedings, Hearing Officers have consistently found that excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005); *Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (affirmed by OSA, 1995). In these cases, it was recognized that the excessive use of alcohol might impair an individual's judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.* Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the security concerns of DOE Security.

#### B. Mitigating Evidence

From the time that the individual received the DOE Psychiatrist's report in October 2005, he has been proactive in addressing the concerns of DOE Security. The individual immediately ceased all consumption of alcohol and made an appointment with his plant psychologist to seek guidance. Tr. at 20. The individual was accompanied by his supervisor, who testified at the hearing and corroborated the individual's testimony. Tr. at 10. The plant psychologist referred the individual to his Employee Assistance Program (EAP) counselor who immediately placed the individual in an intensive outpatient alcohol treatment program (IOP). Tr. at 20. The IOP is a 60-hour alcohol education class involving twenty group therapy sessions over a five-week period. Tr. at 20-21. The individual successfully completed the IOP in February 2006. *See* Ind. Exh. 2 (Certificate of Completion). The individual appeared sincere in testifying that the IOP was "very educational . . . I learned a lot in there," and the classes made him keenly aware of the dangers of excessive alcohol use. Tr. at 21.<sup>2/</sup>

The individual had achieved four months of sobriety at the time of the hearing, and reported that he had not been intoxicated since approximately one month prior to his

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<sup>2/</sup> The DOE Psychiatrist found during her evaluation of the individual that he has a family history of alcoholism, which she referred to as "genetic loading." Tr. at 37; DOE Exh. 11 (Report I) at 7, 18. The individual testified that the IOP helped him to understand why this family trait places him at substantial risk. Tr. at 21, 23.

psychiatric interview in June 2005. Tr. at 26-27. The individual submitted the results of a laboratory blood test taken approximately one week before the hearing, showing that his liver enzymes have returned to a level only slightly above normal. In that test, the individual's GGT liver enzyme measured 70 on a normal scale of 0-65. *See* Ind. Exh. 1. Although the DOE Psychiatrist admonished in her report that the individual must cease excessive drinking and binge drinking, the individual stated that he plans maintain his sobriety, testifying persuasively that: "I don't have any intentions with alcohol in my future. I have a family to raise, I got a new baby on the way . . . To make it simple, I don't intend to drink." Tr. at 25-26. The individual again appeared to be honest and forthright during this testimony.

The DOE Psychiatrist testified at the conclusion of the hearing. The DOE Psychiatrist was impressed with the individual's testimony as well as the steps taken by the individual after he received her psychiatric evaluation report, including successful completion of the IOP and undergoing supplemental laboratory testing. The DOE Psychiatrist was then referred to the recommendations described in her report (Report II) in order for the individual to establish adequate evidence of rehabilitation or reformation. *See* DOE Exh. 10 (Report II) at 2. The DOE Psychiatrist concluded: "[The individual] has met all of the requirements that I set forth . . . As of this time I am comfortable in saying that he's adequately reformed." Tr. at 38. <sup>3/</sup> The security concerns associated with the individual's use of alcohol were primarily based upon the findings and report of the DOE Psychiatrist. In view of the revised opinion of the DOE Psychiatrist, I find that the individual has sufficiently mitigated the concerns of DOE Security under Criterion J.

### III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. § 710.8 (j) in suspending the individual's access authorization. For the reasons I have described above, however, I find that the individual has sufficiently mitigated the associated security concerns. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored. The Manager of the DOE Operations Office or the

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<sup>3/</sup> While the individual's liver enzymes remained mildly elevated in his most recent laboratory test, the DOE Psychiatrist attributed this mild elevation to the anti-depressant medication (Effexor) that the individual continues to takes. Tr. at 40. The DOE Psychiatrist was therefore pleased with the individual's decision to remain abstinent, noting that "while he's on the Effexor he probably shouldn't be drinking anyway." Tr. at 39. She further cautioned, however, that the individual should continue to monitor the effects of the Effexor with his physician. Tr. at 40.

Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown  
Hearing Officer  
Office of Hearings and Appeals

Date: April 26, 2006